

REMARKS

This Amendment is submitted in the above-identified RCE application and in response to the Office Action mailed on November 20, 2002. Applicants note for the record that an Amendment After Final was submitted in the application which was not entered. This Amendment is different than the Amendment After Final which was not entered.

In the previous Office Action dated November 20, 2002, the pending claims were rejected under the judicially-created doctrine of obviousness-type double patenting as well as 35 U.S.C. § 102 and/or 103. With respect to this provisional rejection, Applicants have stated that they will file a terminal disclaimer upon the Notice of Allowable subject matter in either of the two pending applications.

With respect to the prior art rejections, Applicants have amended each of the claims so that they are limited to a protein source comprising whey protein. Applicants' undersigned attorney has discussed with the Examiner the pending rejection of the previous application. Although the Examiner did not commit, he stated that if the claims were limited to whey protein, that the application, he believed, would be in a condition for allowance. All of the claims are so limited. Accordingly, Applicants respectfully submit that the application is now in a condition for allowance. Therefore, Applicants respectfully request that the prior art rejections be withdrawn and the application passed to allowance.

Respectfully submitted,

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